

CHAPTER 4 DISCIPLINARY PROCEEDINGS

[Prior to 5/23/84, IAC, "Disciplinary Proceedings" appeared as Ch 8]
[Prior to 5/23/84, "Licensure to Practice—Licensed Practical Nurse" appeared as Ch 4. See Ch 3.]
[Prior to 8/26/87, Nursing Board[590] Ch 4]

655—4.1(17A,147,152,272C) Board authority. The Iowa board of nursing may discipline a registered nurse, a licensed practical nurse, or advanced registered nurse practitioner in the state of Iowa for any grounds stated in Iowa Code chapters 147, 152, and 272C or the rules promulgated thereunder. Disciplinary proceedings are conducted in accordance with Iowa Code chapters 17A and 272C.

655—4.2(17A,147,152,272C) Complaints and investigations. A complaint is an allegation of wrongful acts or omissions related to nursing practice or licensure.

4.2(1) In accordance with Iowa Code section 272C.3(1)"c," the board shall review or investigate, upon written complaint or upon its own motion pursuant to other information received by the board, alleged acts or omissions which the board reasonably believes constitute cause for licensee discipline.

4.2(2) A written complaint shall include the following facts:

- a. The full name, address, and telephone number (if available) of the complainant.
- b. The full name, address, telephone number (if available), and license number of the licensee (if available).
- c. A statement of the facts concerning the alleged acts or omissions.

4.2(3) A complaint or information received by the board that does not include the facts in subrule 4.2(2) shall require a motion of the board for investigation.

4.2(4) The executive director or authorized designee shall investigate complaints to determine if a violation of applicable law or rule has occurred. The investigation shall result in presentation of investigative conclusions to the board for action.

655—4.3(17A,147,152,272C) Board action. The board shall review investigative conclusions pursuant to subrule 4.2(4) and shall do one of the following:

1. Dismiss the complaint because no probable cause exists.
2. Request further investigation.
3. Appoint a peer review committee to assist with the investigation.
4. Determine that probable cause exists and order a hearing pursuant to Iowa Code section 17A.12.
5. Initiate proceedings to suspend, revoke, or deny issuance or renewal of a license, upon receipt of a certificate of noncompliance, in accordance with the provisions of Iowa Code chapter 252J.

Notification from proper authority that the certificate has been withdrawn shall be sufficient cause for the board to immediately reinstate, renew, or issue a license, provided that the individual is otherwise qualified for licensure.

655—4.4(17A,147,152,272C) Peer review committee.

4.4(1) The peer review committee shall assist with the investigative process. It shall determine if the conduct of the licensee conforms to the minimum standards of acceptable and prevailing practice of nursing and prepare a report of its findings for the board.

4.4(2) The board shall review the committee's findings and dismiss the complaint, request further investigation, or determine that probable cause exists and order a hearing.

655—4.5(17A,147,152,272C) Notice of hearing. The board shall issue an order, notice of hearing, and statement of charges following its determination of probable cause pursuant to Iowa Code section 17A.12(2).

4.5(1) The date, time, and location of the hearing shall be set by the chairperson or the executive director. The licensee shall be notified at least 30 days prior to the scheduled hearing.

4.5(2) Notification shall be in writing delivered either by personal service as in civil actions or by certified mail with return receipt requested. When the licensee cannot be located:

a. An affidavit shall be prepared outlining the measures taken to attempt service, and shall become a part of the file when a notice cannot be delivered by personal service or certified mail return receipt requested.

b. Notice of hearing shall be published once each week for three consecutive weeks in a newspaper of general circulation, published in or circulated in the county of last-known residence of the licensee; the newspaper to be selected by the board or executive director or designee. The first notice of hearing shall be published at least 30 days prior to the scheduled hearing.

4.5(3) Rescinded IAB 10/23/96, effective 11/27/96.

655—4.6(17A,147,152,272C) Answer. A licensee who has been served with a statement of charges may file an answer responding to the allegations.

655—4.7(17A,147,152,272C) Settlements. Pursuant to the provisions of Iowa Code sections 17A.12 and 272C.3, the board may consider resolution of disciplinary matters through informal settlement prior to commencement of contested case proceedings. The executive director or a designee may negotiate with the licensee regarding a proposed disposition of the controversy. Upon consent of both parties, the board will review the proposal for action.

655—4.8(17A,147,152,272C) Subpoena powers. The board shall have the authority to issue a subpoena in accordance with the provisions of Iowa Code sections 17A.13 and 272C.6.

4.8(1) A subpoena which demands the attendance of a witness or the production of evidence at hearing shall be issued by the presiding officer on behalf of the board or the licensee. Requests shall be made to the board office in writing and shall include the name of the witness or a description of the evidence. Service of the subpoena will be the responsibility of the requesting party.

4.8(2) A subpoena which requires production of real evidence that is necessary to an investigation may be issued upon the authority of the executive director or a designee.

655—4.9(17A,147,152,272C) Refusal to obey subpoena. In the event obedience to a subpoena is refused, the requesting party may petition the district court for enforcement.

655—4.10(17A,147,152,272C) Request for continuance. A request for continuance of a contested case matter must be submitted in writing to the board not later than seven days prior to the scheduled date of the hearing. Exceptions shall be granted at the discretion of the executive director only in situations involving extenuating, extraordinary, or emergency circumstances.

655—4.11(17A,147,152,272C) Prehearing conference. A prehearing conference may be held prior to the commencement of a hearing. It may be held upon the request of the hearing panel, counsel for the state of Iowa, or at the request of the licensee.

4.11(1) The executive director or designee shall set the date, time, and location of the prehearing conference and shall notify the licensee.

4.11(2) The following matters, where applicable, may be considered in a prehearing conference:

- a.* Possibility of a settlement.
- b.* The factual and legal issues to be heard.
- c.* Stipulations of fact and agreement to submit documents or records not controverted.
- d.* Expert and other witnesses.
- e.* Proposed exhibits.
- f.* Any other matter which may aid, expedite, or simplify the hearing or determination of any issue.

655—4.12(17A,147,152,272C) Failure to appear at the hearing. If the licensee fails to appear personally or by legal counsel, the board may proceed with the hearing as scheduled and the licensee shall be bound by the results of the hearing to the same extent as if present.

655—4.13(17A,147,152,272C) Authority of the presiding officer during the hearing. The chairperson of the board shall designate the presiding officer pursuant to Iowa Code section 17A.11(1). The presiding officer shall:

1. Enter into the record the names of the presiding officer, the hearing panel members, the parties, and their representatives.
2. Enter into the record the statement of charges, order for hearing, notice of hearing, evidence of service, answer, and any other pleadings, motions, and orders.
3. Administer oaths.
4. Receive testimony and exhibits.
5. Rule on objections and motions.
6. Adjourn the hearing.

655—4.14(17A,147,152,272C) Hearing procedure. The hearing panel:

1. Shall receive opening statements from the parties.
2. Shall receive evidence, in accordance with Iowa Code section 17A.14 on behalf of the state of Iowa and on behalf of the licensee.
3. May question witnesses.
4. Shall receive closing statements from the parties.
5. May request that briefs be filed.
6. Shall determine the findings of fact and conclusions of law by a majority vote and report its findings in writing within a reasonable period.

655—4.15(17A,147,152,272C) Panel of specialists. The board may appoint a panel of nurses who are specialists to ascertain the facts of a case pursuant to Iowa Code section 272C.6(2). The board chairperson or designee shall appoint the presiding officer.

4.15(1) The executive director shall set the date, time, and location of the hearing by the panel of specialists and shall notify the licensee.

4.15(2) The panel of specialists shall:

- a. Enter into the record the names of the presiding officer, members of the panel, the parties, and their representatives.
- b. Enter into the record the notice and evidence of service, order for hearing, statement of charges, answer, and any other pleadings, motions and orders.
- c. Receive opening statements from the parties.
- d. Receive evidence, in accordance with Iowa Code section 17A.14, on behalf of the state of Iowa and on behalf of the licensee.
- e. Question the witnesses.
- f. Receive closing statements from the parties.
- g. Determine the findings of fact by a majority vote and report its findings in writing within a reasonable period.

655—4.16(17A,147,152,272C) Contested case decisions. Contested case decisions are the final decisions rendered as a result of the board having issued a statement of charges and notice and order for hearing. The final decision in a contested case shall be adopted by a majority of the board pursuant to Iowa Code section 272C.6(5).

4.16(1) The board may, upon reasonable grounds, dismiss a case at any time. The final decision is dismissal, and the case is closed.

4.16(2) The board may accept a settlement as specified in rule 4.7(17A,147,152,272C). A stipulation and order, signed by the chairperson and the respondent, will be considered a final decision.

4.16(3) The board shall review and revise, if necessary, the findings of fact written by a hearing panel of specialists. After the board adopts the final findings of fact, it shall determine the order. The final decision shall be written and include findings of fact and conclusions of law.

4.16(4) The board may accept the voluntary surrender of a license as a final resolution of a contested case. The board shall issue an order for acceptance of the voluntary surrender which is considered a final decision. The board may impose conditions for reinstatement in the final order.

4.16(5) The final decision of the board shall be issued within ten working days of the board's acceptance of a written decision. A copy of the final decision shall be mailed to the licensee by certified mail, return receipt requested. If delivery is not accomplished in this manner, the board shall mail a copy of the decision to the licensee's last-known address by regular mail.

4.16(6) The final decision is a public record pursuant to Iowa Code section 272C.6(4). The final decision shall be published in the board's newsletter and submitted to the National Council of State Boards of Nursing, Inc. A copy of the statement of charges and the final decision or summary information may also be provided to the appropriate licensing authorities in other states, other data repositories as deemed appropriate, the press and any others who request it.

655—4.17(17A,147,152,272C) Application for rehearing. Within 20 days after issuance of a final decision by the board, either party may file an application for rehearing. The application shall state the specific grounds for rehearing and the relief sought. If rehearing is not granted within 20 days after service on the executive director, the application shall be deemed denied.

- a.* Upon rehearing, the board may consider facts not presented in the original proceeding if:
 - (1) The facts arose subsequent to the original proceedings; or
 - (2) The party offering the evidence could not reasonably have provided the evidence at the original proceeding; or
 - (3) The party offering the additional evidence was misled as to the necessity for offering the evidence at the original proceeding.
- b.* The decision made upon rehearing may incorporate by reference any or all parts of the decision made upon the conclusion of the original proceeding.

655—4.18(17A,147,152,272C) Sanctions. A sanction is a disciplinary action by the board which resolves a contested case. The board may impose one or more of the following for violation of Iowa Code section 147.55 or 152.10, or rule 655—4.19(17A,147,152,272C).

1. Revocation.
2. Suspension.
3. Probation.
4. Civil penalty. A fine may be imposed in accordance with Iowa Code section 272C.3(2) “e.” Assessment of a fine shall be specified in the order and may not exceed a maximum amount of \$1000. Fines may be incurred for:
 - Practicing without an active license: \$50 for each month or part thereof, beginning on the date that a license enters delinquent status.
 - Obtaining a license by falsification of continuing education records: \$50 for each contact hour falsified.
 - Violating rule 4.19(17A,147,152,272C): an amount deemed appropriate.
5. Citation and warning.

655—4.19(17A,147,152,272C) Reasons for sanction. The board may discipline a licensee for wrongful acts or omissions related to nursing practice or licensure.

4.19(1) In accordance with Iowa Code section 147.55(1), behavior which constitutes fraud in procuring a license may include but need not be limited to the following:

- a.* Falsification of the application, credentials, or records submitted to the board for licensure as a registered nurse, licensed practical nurse, or registration as an advanced registered nurse practitioner.
- b.* Fraud, misrepresentation, or deceit in taking the licensing examination or in obtaining a license as a registered nurse, licensed practical nurse, or registration as an advanced registered nurse practitioner.
- c.* Impersonating any applicant in any examination for licensure as a registered nurse or licensed practical nurse.

4.19(2) In accordance with Iowa Code section 147.55(2), professional incompetency may include but need not be limited to the following:

- a.* Lack of knowledge, skill, or ability to discharge professional obligations within the scope of nursing practice.
- b.* Deviation by the licensee from the standards of learning, education, or skill ordinarily possessed and applied by other nurses in the state of Iowa acting in the same or similar circumstances.
- c.* Willful or repeated departure from or failure to conform to the minimum standards of acceptable and prevailing practice of nursing in the state of Iowa.

- d.* Willful or repeated failure to practice nursing with reasonable skill and safety.
- e.* Willful or repeated failure to practice within the scope of current licensure or level of preparation.
- f.* Failure to meet the standards as defined in 655—Chapter 6, Iowa Administrative Code.
- g.* Failure to comply with the requirements of Iowa Code chapter 139C.

4.19(3) In accordance with Iowa Code section 147.55(3), nursing behavior (i.e., acts, knowledge, and practices) which constitutes knowingly making misleading, deceptive, untrue, or fraudulent representations in the practice of a profession may include but need not be limited to the following:

- a.* Oral or written misrepresentation relating to degrees, credentials, records, and applications.
- b.* Falsifying records related to nursing practice or knowingly permitting the use of falsified information in those records.

4.19(4) In accordance with Iowa Code section 147.55(3), nursing behavior (i.e., acts, knowledge, and practices) which constitutes unethical conduct may include but need not be limited to the following:

- a.* Performing nursing services beyond the authorized scope of practice for which the individual is licensed or prepared.
- b.* Allowing another person to use one's nursing license for any purpose.
- c.* Improper delegation of nursing services, functions, or responsibilities.
- d.* Committing an act or omission which may adversely affect the physical or psychosocial welfare of the patient or client.
- e.* Committing an act which causes physical, emotional, or financial injury to the patient or client.
- f.* Engaging in sexual conduct, including inappropriate physical contact or any behavior that is seductive, demeaning, or exploitative, with regard to a patient or former patient.
- g.* Failing to report to, or leaving, a nursing assignment without properly notifying appropriate personnel and ensuring the safety and welfare of the patient or client.
- h.* Violating the confidentiality or privacy rights of the patient or client.
- i.* Discriminating against a patient or client because of age, sex, race, creed, illness, economic or social status.
- j.* Failing to assess, accurately document, or report the status of a patient or client, including signs, symptoms, nursing care delivered and responses.
- k.* Misappropriating medications, property, supplies, or equipment of the patient, client, or agency.
- l.* Fraudulently or inappropriately using or permitting the use of prescription blanks or obtaining prescription medications under false pretenses.
- m.* Practicing nursing while under the influence of alcohol, illicit drugs, or while impaired by the use of legitimately prescribed pharmacological agents or medications.
- n.* Being involved in the unauthorized manufacture, possession, distribution, or sale of any controlled substance.
- o.* Conviction of a misdemeanor or felony related to the practice of nursing.
- p.* Failure to report to the board, within a reasonable period of time, any suspected wrongful acts or omissions committed by a licensee.

4.19(5) Rescinded IAB 10/23/96, effective 11/27/96.

655—4.20(17A,147,152,272C) Application for reinstatement. Any person whose license to practice nursing has been suspended, revoked, or voluntarily surrendered may apply to the board for reinstatement in accordance with the terms and conditions of the order.

4.20(1) If the license was voluntarily surrendered, or if the order for suspension or revocation did not establish terms and conditions for reinstatement, an initial application may not be made until one year has elapsed from the date of the order.

4.20(2) The application shall allege facts and circumstances which will enable the board to determine that the basis for the sanction or voluntary surrender no longer exists, and that it is in the public interest to reinstate the license. The burden of proof to establish these facts shall rest with the petitioner.

4.20(3) The hearing in an application for reinstatement is a contested case in the meaning of Iowa Code chapter 17A.

4.20(4) The order to grant or deny reinstatement shall incorporate findings of fact and conclusions of law. If reinstatement is granted, terms and conditions of licensure may be imposed.

655—4.21(17A,147,152,272C) Licensee review committee. In accordance with the provisions of Iowa Code section 272C.3(1) “k,” the board shall appoint a licensee review committee for the purpose of evaluating and monitoring licensees who self-report physical or mental impairments. The committee shall be comprised of the executive director or designee, a representative with chemical dependency or mental health treatment experience, and a recovering nurse with at least five consecutive years of sobriety.

4.21(1) Eligibility for referral to the committee shall be determined by the executive director in accordance with the following criteria:

- a.* The licensee must self-report the impairment.
- b.* The licensee must submit an evaluation summary, diagnosis, or other evidence which supports a determination that an impairment exists.
- c.* There must be no indication of nursing employment or practice-related problems.
- d.* There must be no violation of law or board rules related to impairment-associated behaviors.
- e.* There must be no record of prior board sanction for impairment-related problems.

4.21(2) The committee shall meet as necessary, but not less than once in each calendar quarter, in order to interview potential participants, develop consensual agreements for new referrals, review licensee compliance, and determine eligibility for continued monitoring.

4.21(3) Conditions placed upon the licensee and the duration of the monitoring period shall be established by the committee and communicated to the licensed individual in writing.

4.21(4) The licensee must consent to the conditions proposed by the review committee in order to participate in this program.

4.21(5) Failure to comply with the provisions of the agreement shall require the committee to make immediate referral of the matter to the board for possible disciplinary action.

4.21(6) Information in possession of the licensee review committee shall be subject to the confidentiality requirements of Iowa Code section 272C.6.

These rules are intended to implement Iowa Code chapters 17A and 252J and Iowa Code sections 147.76, 147.90, 252H.10, 272C.3(1) “k,” 272C.4, 272C.5, 272C.6, 598.21(4) “e” and 598.21(8).

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